THE DECALOGUE JOURNAL

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The Character of Justice Holmes

. . . . He had a serenity even in his moments of anger or near-despair, an assurance even in the midst of skepticism. It is a chastening thing to read his writings over the span of his life—to see how slow has been the movement toward a workable democracy, how many obstructions have been placed in its path, how unmalleable have been the interpretations placed on the fundamental laws by the dominant judicial caste, how spirit-breaking the efforts to fight against complacency and blindness. But if it is chastening, it is also heartening, particularly today when the young men need to be heartened about the future of a militant democracy: heartening to see how at the high tide of capitalist materialism there were still those who stood by their faith in social reason and in the competition of ideas, their belief in the steady, if slow, march of social progress. Holmes was one of these. He was at once buoyant and unfooled. The most striking thing about him was that he refused to live in a closed universe. He was a great spokesman of our Constitutional tradition because he was a great enough conservative to stretch the framework of the past to accommodate at least some of the needs of the present. . . .

. . . . There are those who compare Holmes with John Marshall. The comparison is unjust to both men. Unlike Marshall, Holmes is a great man regardless of whether he was a great justice. He will probably leave a greater effect on English style and on what the young men dream and want than upon American constitutional law. Marshall's reputation stands or falls with the vested interests he defended and with the viability of the system of economic relations that leans heavily on his constitutional interpretations. The greatness of Holmes will survive the vested interests and their constitutional bolstering. It will stand up as long as the English language stands up, as long as men find life complex and exciting, and law a part of life, and the sharp blade of thought powerful to cleave both. . . .

—THE MIND AND FAITH OF JUSTICE HOLMES
Edited by Max Lerner. Modern Library.

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BENJAMIN WEINTROUB, Editor

IN THIS ISSUE

New Appointment Book & Directory

The 1955 Appointment Book and Directory "the best ever," according to Oscar M. Nudelman chairman, will be available for free distribution to all members between December 10 and December 15, 1954. For exact date, please address The Decalogue Society at 180 West Washington St., telephone—ANdover 3-6493.

JOIN A COMMITTEE!

Twenty seven committees dealing with nearly every phase of a lawyer's professional or communal life, function in our Society. There are, also, as a particular situation may require, special committees to meet unforseen problems. Each committee is headed by a chairman who appoints a number of members to cooperate with him in the discharge of his duties.

President Elmer Gertz has issued another appeal to the membership urging participation in the activities of our Society. "The life-blood of any organization," he said, "is derived through its committees. They give meaning and vitality to our efforts. The Decalogue Society of Lawyers should continue to grow as an effective force for the enhancement of the prestige of the bar and the good of our community. Again I earnestly bespeak the participation of every member in the manifold work of our Society. Please indicate on which committee you are interested to serve."

Mr. Gertz may be reached at our Society's headquarters, 180 W. Washington Street, telephone: ANdover 3-6193, or at his office, telephone, ANdover 3-3553.

JUDGE JARECKI HONORED

A resolution passed by our Board of Managers commended Judge Edmund K. Jarecki of the County Court upon his thirty-two years of service on the Bench, and felicitated him upon his impending retirement from office.

President Elmer Gertz at a large gathering on October 21, in Judge Jarecki's courtroom, joined with other representatives of the Bench and Bar in paying tribute to the retiring Judge. Gertz read the resolution passed by our Board which was in part, as follows:

May your well earned years of retirement be filled with health and happiness for yourself and those dear to you. May you have much joy as you meditate over the experiences through which you have passed, and as you contemplate the brave new world that is being created by your younger contemporaries. May all of us emulate your devotion to duty and your rectitude.

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Illinois.

Operation Freedom

An Address by TOM C. CLARK, Associate Justice, United States Supreme Court

More than four hundred members of our Society, their families and friends gathered at a dinner in the Sherman Hotel, September 21, to hear Justice Tom C. Clark of the U. S. Supreme Court and former Attorney General of the U. S. The Decalogue Society, in cooperation with the Bonds for Israel Chicago Committee, sponsored this event in a successful campaign to sell Israel Development bonds.

President Elmer Gertz presided and introduced member Congressman Sidney R. Yates of the Ninth Illinois Congressional District who was chairman of the affair. At the speaker's table as well as in the audience there were many judges along with other leaders of our community. Justice Clark who came to Chicago at the express invitation of our Society was warm in his praise of our organization which he said, "is rich in the tradition of brotherliness," and ". . . which has for twenty years rendered great service . . . in the cause of liberty and equality. . . ." The Justice chose as his subject, "Operation Freedom." The complete text of his address follows:

It is a privilege to meet this evening with the distinguished members of The Decalogue Society of Lawyers. I find it particularly rewarding to appear before a group whose members comprise that alert citizenry on which the effective functioning of our democratic processes depends.

In view of your profound interest in the State of Israel it is entirely appropriate that we take a twin look tonight at the United States and the State of Israel, one of the largest and one of the smallest true democracies in the world today, both young as statehood goes, yet each believing in and practicing the democratic principles handed down by their forefathers. It is not surprising that the United States was in the vanguard in extending immediate recognition and in implementing our profound sympathy and warm friendship for Israel. The celebration of the Tercentenary of Jewish settlement in the United States underlines a valuable record of devoted service to the development of our country. Not only the United States, but the world as a whole, has benefited from the Jewish ideals of freedom and justice and we had reason to believe that these ideals would be furthered and strengthened in the new nation of Israel. Today we can state that our confidence and friendship have not been misplaced.

Few nations in history have accomplished so much with so little and in so short a period as the State of Israel. These achievements loom even larger when viewed against the unrest of modern times. Unlike other nations, the State of Israel could not afford the luxury of growing up. From the moment of their declaration of political independence some six years ago, the people of Israel have been engaged in an inspiring program of democratization—implementing their principles of humanity and freedom. Their first general election was held in 1949 when almost a half million electors went to the polls to set-up the governing structure of a republic. Today over 60 nations have accorded recognition to this full-fledged State.

But the Israelis realized that it takes much more to maintain a strong democracy, and they have been busy developing the economic condition of their ancient land. Much progress, I am told, has been made in industry and in agriculture, both so necessary to democratic existence. The magic of irrigation is transforming the sands of the desert into a flowering oasis and the cities are becoming industrial arsenals of freedom.

But the people of Israel realized that it took more than all this to maintain the ramparts of democracy. They took a page from American history that tells us that only where the people are dedicated to freedom may it live and grow. As Chief Justice Warren has aptly phrased it, there must be a "climate" for freedom. In short, keeping your powder dry may be helpful in gaining freedom and wealth, may be useful in

protecting it, but only hearts with understanding can attain real liberty—and vigilance must secure it against erosion. These principles apply equally to the large and the small nation.

In these perilous times, besides the danger from the outside there is danger of a steady chipping away at our freedom from within. It is well for us to take inventory and ask, "Who are the vigilant 'minute men' protecting our liberties?" Who carries on "Operation Freedom?" Some say we depend on the Supreme Court. But this could not be true, for the Court can operate only in the area of cases that come before it, a very small percentage of the threats to personal liberties. True, the Court has rendered great decisions for freedom and equality, *Brown* versus *Board of Education*—the segregation cases—being the latest of a long line; however, the impartiality and detachment required of a court prevents the Supreme Court from pressing ahead with that militant spirit so necessary in preventing the curtailment of freedom. Some may say that Congress is the protector of our liberties. But the Alien and Sedition Acts of 1798 long ago demonstrated that this is not so. A third group asserts that we rely on the Executive Department to protect our individual rights. But almost every generation of Americans has been forced to call on the courts for relief against some type of executive encroachment. Nor may the protection of our liberties be entrusted to the states. Our experience as to them has been similar to that with the national government. And the states could not in any event prevent the encroachments of the more powerful national government on the liberties of the citizen.

And so we repeat—who, then, carries on "Operation Freedom"—who are the "minute men," the real protectors of our liberty. The answer is found in the words of the Preamble to the Constitution of the United States, "We the People . . ." This is the first line of defense for our freedom. It is the people who laid the foundations on which our government rests in such form "as to them shall seem most likely to affect our safety and happiness;" it is the people who elect their representatives to carry out their wishes in the day to day operation of that government. Freedom exists, therefore, in proportion to the strength of the people. To insure freedom, every citizen must be prepared to engage in its defense. Each person is a minute man in "operation freedom." It is every freeman's business.

Now there is an old saying that "everybody's business is nobody's business." This is where the danger lies in a democracy, whether it be Israel or the United States of America. The people, whether they be in Tel Aviv or Chicago must be public spirited and vigilant. They must be active in their homes, on juries, at the polls, and on the street corners. The power of an aroused public cannot be overestimated. There are many concrete examples of this, but here is one from my own community. It involved a relatively small invasion of privacy but one distasteful to a good many people. I refer to the famous "captive audience" case, which involved the broadcasting of commercial radio programs on the street cars. Although the Court did not find any infringement of Constitutional rights—thus permitting a continuance of the broadcasts—we no longer have them with us. Its sponsors yielded to the pressure of popular indignation, even though only a small segment of the public found the programs personally objectionable.

On the other hand, the indifference of people to the performance of their public duties leads to the loss of individual rights, and a combination of these brings the inevitable decadence of any civilization. Dictators cut their teeth on the indifference of people who believe them to be their protectors. Tyranny soon springs from such roots. This is the overriding lesson of the history of nations: as soon as men say of the affairs of State, "What does it matter to me?" that State's days as a democracy are numbered. If a nation—be it Israel or the United States—is to continue as a haven of liberty and equality, then all persons must share to the utmost in its government.

Your society for 20 years has rendered great service in this and related fields. Your Journal has been an eloquent and articulate medium in alerting the profession to inroads upon the rights of the individual. And the fact that you have chosen such men as Judge Harry M. Fisher, Percy Julian and Albert Einstein as recipients of the honored Decalogue Award reveals your keen eye for those who have

contributed much to the protection of individual freedom. You have evidenced the necessary will for freedom and, as James Russell Lowell has said, you realize that

"Freedom is recreated year by year in hearts wide open on the Godward side."

Admittedly, it is recreated by a *Zenger* case, *Shelly* versus *Kraemer*, a *Brown* decision, but it is recreated far more in the every-day lives of men and women like you who constantly strive for freedom—not only your own freedom but that of others too—knowing that the battle is never completely won. Each generation must attain it again and again—extend and develop it—lest through lethargy freedom "be forever fall'n." The Bill of Rights confers privileges on individuals, not on groups, and our best protection against dictatorship is the fact that we each have certain individual rights of which no majority can deprive us. But the defense of these individual rights depends on the efforts of all of us. If, in the hope of security, we surrender any of these rights or overlook their infringement when an unpopular minority is the victim, freedom will disappear here just as surely as the moon will set tonight. Unless we of the democracies dedicate ourselves to the business of fighting for our freedom instead of leaving the fight as we do for the most part to the poor, the forlorn and the defenseless, we shall by our own inaction throw our great heritage away. It is for you—a society rich in the tradition of brotherliness—and for the countless thousands like you, to carry on the fight to promote the main business of human life—"Operation Freedom"—both here and throughout the world. When you do this, your satisfaction will be likened unto that of the jury in Zenger's case, as so eloquently expressed by Andrew Hamilton, counsel for the defense:

. . . The question . . . is not of small nor private concern; it is not the cause of a poor printer, nor of New York alone, which you are now trying. It may, in its consequences, affect every freeman that lives under a . . . government . . . It is the best cause; it is the cause of liberty; and I make no doubt but that your upright conduct this day will not only entitle you to the love and esteem of your fellow citizens; but every man, who prefers freedom to a life of slavery will bless and honor you, as men who have baffled the attempt of tyranny; and . . . have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that to which nature and the laws of our country have given us the right—(our) liberty."

Congratulations!

The following members of our Society were elected to public office in the general election in the City of Chicago and in Cook County, November 2, 1954:

For Associate Judgeships of Municipal Court

HYMAN FELDMAN; DAVID LEFKOVITZ;
JAY A. SCHILLER

Elected as State Senators

ROBERT E. CHERRY
31st Senatorial District
MARSHALL KORSHAK
5th Senatorial District

Elected as State Representative

BENJAMIN NELSON
19th Senatorial District

Elected as Congressman

SIDNEY R. YATES
9th Congressional District

Civic Affairs Committee Recommends

In response to an appeal by the Chicago Commission on Human Relations sent to all civic and communal organizations in this city to name individuals outstanding in 1954, for their fight to end discrimination and make for better understanding among races, our Civic Affairs committee recommended as candidates for the honor the following:

Alderman Archibald H. Carey, Alternate Delegate to United Nations.

Congressman Sidney R. Yates.

State Senator Marshall Korshak.

Elmer Gertz, President, The Decalogue Society of Lawyers.

Edward Meyerding, United Civil Liberties Union.

MAX REINSTEIN, COLUMNIST

Member Max Reinstein will conduct a column entitled "Your New Income Tax" in several North Side newspapers edited by Leo A. Lerner who was the recipient of The Decalogue Award Of Merit in 1945. Reinstein's articles will continue for sixteen weeks and will endeavor to cover important changes taking place in the new 1954 Internal Revenue Code which will affect individuals, partnerships, and corporate taxpayers.

Pre-Trial Conference Panel

Power to order the transfer of cases filed in the Circuit Court of Cook County to the Municipal Court of Chicago where the amount sued for falls within the jurisdictional requirements of the City Court was urged by Judges Thomas J. Courtney and Harry M. Fisher of the Circuit Court and member Leo S. Carlin at a Decalogue Society luncheon on Friday October 1, at the Covenant Club.

Judge Courtney pointed out that more cases were disposed of by the Circuit Court last year than at any time in the history of the court, but that the backlog continues to grow. He described the Pre-trial Conference as one of the most worthwhile methods of accellerating disposition of cases yet proposed. Bespeaking the co-operation of the bar, the former States Attorney of Cook County compared the two cases a week that the average judge usually hears, with the 603 cases disposed of in one year by one judge, via the pre-trial conference.

Leo S. Carlin, member of the Board of Governors of the National Association of Plaintiffs' Lawyers, traced the use of the Conference to where it is now deeply rooted in the law. Commenting upon a belief widely held among plaintiffs' counsel, that greater rewards lie in going to the jury, Carlin argued that "except in the unusual case, greater benefits ensue in going through with the pre-trial conference. With a backlog of 14,859 common law cases in the Superior Court and 12,656 in the Circuit Court, a situation is presented which no lawyer can ignore."

Calling for greater acceptance by the bar of the pre-trial conference in its own self interest, Carlin said: "In the light of the condition of the calendar and the economic circumstances of our clients who should not have to wait, it behooves us to give full co-operation to the judges, in the interest of equity and dispatch."

Member Judge Harry M. Fisher reminded the assembled lawyers, of the Talmudic injunction that no judge should proceed to try a case until he has brought the contending parties before him and sought to resolve the matter amicably.

Adding his endorsement of the pre-trial conference Judge Fisher dwelled upon other possibilities for relief of the judicial calendar. High on the list of priorities, insisted the Judge, should be revision of the Judicial Article of the Illinois Constitution to provide for greater increase in the number of judges.

The panel was arranged by the Decalogue Legal Education Committee, Maynard Wishner, chairman.

COL. JACOB M. ARVEY HONORED

A large number of members of our Society participated in paying tribute to member Col. Jacob M. Arvey, recipient of The Decalogue Award of Merit for 1950, at a testimonial dinner in his honor, November 6, in the Conrad Hilton Hotel, "in recognition of his devoted leadership as Honorary Chairman of the Greater Chicago Committee for State of Israel Bonds by uniting with him in support of Israel's program for economic security."

More than 2,000 persons bought a minimum of $1,000 each in Israel Development Bonds in order to attend the dinner. Over 2,000,000 in Israel Bonds were sold at this affair.

Among those participating in the tribute were Adlai E. Stevenson, 1952 Democratic nominee for President; Abba Eban, Israel Ambassador to the United States; Senator Paul Douglas of Illinois and Senator Estes Kefauver of Tennessee.

LECTURES ON 1954 REVENUE CODE

The Decalogue Committee on Legal Education, Maynard Wishner, chairman is preparing a series of six weekly lectures on Federal Taxation to be given at the offices of the Society in the late afternoons during January and February, 1955. The lectures will cover important changes under the 1954 Revenue Code, of interest to the general practitioner. A detailed schedule of the series will be sent to the membership shortly.

HARRY G. FINS

Member Harry G. Fins addressed our Society on October 29, under the auspices of The Decalogue Legal Education Committee, on "New Illinois Practice Act." Mr. Fins' lecture will appear in a near issue of the Journal.

Drilling for Oil — The Law

By SAMUEL BERKE

Member Samuel Berke is Master in Chancery of Superior Court of Cook County. An authority on Oil Drilling law, he is a frequent writer and lecturer on this subject.

One of the many puzzling questions which I am asked most frequently is, "Where I have a small interest in an oil property am I compelled to share in the cost of drilling a well?" The answer is easy where there exists an operating or other type of agreement between the interested parties. This problem is of primary importance, however, where there is no agreement between the owners of the w.i.—Working Interest—the owners thereof share and bear, in proportion to their interest, all the costs of development and operation, as distinguished from owners of royalty interests which is free of these costs.

In Illinois an act of the legislature was approved July 1, 1939 which clearly spells out the rights and obligations of joint tenants; tenants in common, and co-parcenors—co-parcenors are persons to whom an estate of inheritance descends jointly, and by whom it is held as an entire estate. The shares need not be equal. The estate is rare in America but sometimes does exist—whether minors or of full age, who may have ownership in the same lands.

Chapter 93 in Sections 50 to 58 clearly states that the owner of the majority interest in lands in Illinois where oil or gas is being drained, or is in imminent danger of being drained therefrom, by means of wells on other lands, may be authorized to drill on said land by filing a a proceeding in chancery in the Circuit Court of the county in which the land is located, seeking permission to drill for the benefit of all, and after issue the court may grant a decree deciding all relevant issues of title, clouds on title, etc., and may authorize the plaintiff to drill and charge the interest of the others with their proportionate share of the costs, to be deducted from their share of the net income.

Prior to the enactment of this statute, any co-tenant who assumed to exercise exclusive ownership was liable to account for damage to common property and was not allowed to deduct expenses incurred in taking profits from the land, thereby creating many situations which were unfair in that certain co-tenants, without taking risks, thus would be rewarded for failure to act in protecting and developing their own holdings.

In the year following the passage of this statute, litigation arose which was carried to the Supreme Court of Illinois. Much law has been established by the Illinois courts on the subject of oil. Production in this State goes back as far as 1904. And in 1944 in the case of The Pure Oil Company et al vs. James Lawrence Byrnes et al—388 Ill. at page 27 the court held valid this law and further established that the relationship between the majority and minority interests was not a creditor and debtor one but that there existed a fiduciary relationship which resulted in a constructive trust and enforcible in equity. This arose by virtue of the majority having the right to take possession and control of the common property for its protection against loss by drainage from adjacent wells.

Every operator of oil properties attempts to provide and cover such a contingency, as well as to anticipate all future problems, by getting all interested parties to enter into a written agreement which recites the obligations as well as the benefits.

Another query is frequently heard, "In the absence of a formal operating agreement can the operator impose a personal liability for the drilling of a well, upon the owner of a small fractional interest?"

Let us assume that A, B, C and D own a lease with a producing well on it. A operates the lease but has no formal agreement, and together with B and C a second well is drilled for which the driller is not paid. The driller allowed time for filing a lien to expire, and brought suit against D for judgment at law. In a proceeding of this nature the burden is on the plaintiff to allege and prove by competent evidence that a mining partnership existed

(Thornton Oil & Gas, Vol. 2 Sec. 658), and whether a mining partnership in fact existed depends on the acts and conduct and intent of the parties. A mere tenancy in common or joint ownership of the lease or property does not make the owners partners, and the acquisition of an interest in the leasehold estate by several persons makes them tenants in common only.—Summers Oil & Gas, Perm. Ed. Vol. 4, Sec. 723, Page 150—Hand & Allen, 294 Ill. 35.—Before a mining partnership is established it must be shown not only that there is a joint ownership of the property but also a joint working and a joint operation of the lease involved, which must be shown by competent evidence. Dunbar vs. Olson 349 Ill. App. 308 at page 313. Opinion filed January 30, 1953.—By joint operation is obviously meant that each of the joint owners must have some choice and participation in control and management. The court stated:

"It is apparently the conclusion of the courts and authorities in the field of oil and gas law that because of the uncertainty of mining operations few persons are willing to risk their means in such an undertaking, and that interests owned by persons differ in amount as each is able to furnish means or is willing to take the risks, and that these interests are constantly being assigned and strangers are being injected into the ownership, so that it would be unjust to subject each proprietor to personal liability which might sweep away all his property in an undertaking created against his consent by those who could become members without his knowledge and against his wishes. The individual proprietor deserves to be protected against unauthorized acts of others and at the same time the claims of creditors should be properly secured to insure a successful working of leased premises. As we have indicated, the filing of liens or other direct proceedings would be available to the creditor. In absence of any formal mining partnership or joint operation or joint working of the oil lease by the co-tenants other than Shaffer, there appears to be no basis for imposing a personal liability upon them."

In this case the Appellate Court reversed judgments entered by the lower court against the defendants, other than Shaffer, who operated the property and made the contract for drilling the well.

JUDGE BRAUDE WRITES A BOOK

A manual for public speakers based on member Judge Braude's long and varied experience gathered in addressing over two thousand groups during a period of more than twenty years will be published, next spring, by Prentice-Hall, Inc.

Tercentenary Note

A large number of members of our Society are actively participating, through various organizations, in plans to celebrate the Tercentenary of the settlement of the Jewry in the United States. Nearly every Jewish communal group in Chicago —social, professional, religious and fraternal—is intensely at work to mark with appropriate public functions the Jew's patriotic part in building this land of ours. Books and pamphlets describing the contribution of the Jew to the growth of America in every phase of its development for the last three hundred years are already published. The celebration officially begun on September 12, in New York, and public events commemorating the Tercentenary are to continue until May, 1955.

The American Jewish Historical Society, New York, is spearheading the Tercentenary campaign throughout the Union. The president of the Chicago group is Samuel N. Katzin, civic and community leader, with offices at 135 South La Salle Street, where information about activities planned for Chicago may be obtained.

WILLIAM J. ROBINSON, PRESIDENT

Member William J. Robinson, long active in communal affairs of our city was installed as President of the Chicago Jewish National Fund organization, on November 14, at a large gathering in the Morrison Hotel.

Members Judge Jacob M. Braude and Bernard Shulman are among the past presidents of the Jewish National Fund, Chicago chapter.

Smulevitz President of Indiana B'nai B'rith

Member Henry S. Smulevitz was elected president of the Indiana State B'nai B'rith. As president, Smulevitz heads lodges in 17 cities of Indiana and the two Hillel Foundations located at Purdue and Indiana Universities.

HARRY D. COHEN

Past president Harry D. Cohen was appointed as the new Chairman of The Decalogue Membership Committee. More power to you, Harry!

Recent Illinois Probate Law Decisions

By NAT M. KAHN

Member Nat M. Kahn is a frequent writer and lecturer of probate law subjects. He is a member of the Board of Governors of the Illinois State Bar Association. The following is his summary of recent decisions of Illinois Courts of review in the field of probate law.

In preparing this summary, Mr. Kahn has attempted to propound the basic reasons underlying the decision in each case without offering editorial comment. The constant perplexing problems, however, posed by the Illinois Dead Man's Statute (Chap. 51, Sec. 2, Ill. Rev. Stats. 1953) have impelled him to volunteer comments of his own concerning, for instance, People ex rel. *Williams v. Wismuth,* 2 Ill. Appl. 2d 109 (2nd Dist.) and three other cases. Significant landmark decisions were decided by the Supreme Court in *Amann v. Faidy, Petta v. Host, Rehbein v. Norene,* and the Appellate Court in decisions in re *Estate of Knasek;* in re *Estate of Betts;* and in re *Estate of Yocum.*

The Appellate Court for the First District in *Link v. Ralston* completely reversed its opposite conclusion in *Cuilini v. Northern Trust Company,* 335 Ill. App. 86, relating to the permission of introduction of parol evidence to prove the true intention of the parties in joint bank accounts, with right of survivorship of a convenience arrangement between the parties, and that the survivor was not to own any of the funds. The Supreme Court of Illinois granted a petition for leave to appeal in this case, and the final word on this subject by the Supreme Court is anxiously awaited by the bar.

The Supreme Court also granted the petition for leave to appeal in the recent Appellate Court for the First District case of *Farkas v. Farkas,* and will decide whether a purported declaration of trust actually did create a trust.

Supreme Court of Illinois Decisions

Barnhart v. Barnhart, 415 Ill. 303, 114 N. E. 2d 378. The testator was survived by his widow and a son. The testator's intention was clear that his widow was to have a life estate only. Upon its termination, the trust estate was to be distributed to "my heirs at law under the Statutes of Descent of the State of Illinois." In view of the clear intention of the testator to limit his widow to a life estate, the Supreme Court held that the heirs of the testator are to be determined as of the date of death of the widow, the life tenant.

Amann v. Faidy, 415 Ill. 422, 114 N. E. 2d 412 is a landmark wrongful death action that overrules *Allaire v. St. Luke's Hospital,* 184 Ill. 359, 56 N. E. 638. An action for wrongful death under the Illinois Injuries Statute may be maintained by the administartor of the estate of a child who was negligently injured *en ventre sa mere,* and who died as a result of these injuries.

Farmers State Bank v. Mangold, 415 Ill. 602, 114 N. E. 2d 797. The testator gave his wife a life estate and the remainder to the "two girls now in our home —providing they do that which is right—otherwise to be distributed as my wife Lizzie may see fit or direct—." The attempt to give the testator's widow the power to divest the remainder was void for uncertainty and the admonition that the girls "do what is right" was too vague and uncertain to be given any legal effect.

Petta v. Host, 1 Ill. 2d 293, 115 N. E. 2d 881. A lawful surviving widow had been deserted by her husband for about 25 years before his death. She was never given notice of the probate of his will. She promptly renounced his will within ten months after she learned of his death and the admission of his will to probate. The proceedings to admit the will to probate were a nullity as to her. Her renunciation of the will was timely. As to a conveyance of real estate by her husband during his lifetime, she had no interest in the land at his death as she failed to perfect dower therein, and she had no interest in this land as an heir, as her husband did not own it at his death. As to real estate conveyed after his death by the beneficiaries under his will, bona fide purchasers who relied on public probate records as to the identity of the beneficiaries under the will acquired good title superior to that of the lawful surviving widow.

In re Estate of Calo, 1 Ill. 2d 376, 115 N. E. 2d 778 involved the admission of a will to probate. The testator was blind and signed his will by making a cross. He did not inform the witnesses of its contents and the will was not read aloud to the testator in the presence of the witnesses. The will was held to have been duly executed as "all that is necessary is that a testator be of sound mind and memory, that he knows he is executing his will and that the attesting witnesses do so at his request."

Stocker v. Stocker, 1 Ill. 2d 405, 115 N. E. 2d 614 was an action to enforce an alleged oral contract to devise real estate. The Supreme Court followed the well settled rule that evidence of expressions of intention or appreciation without further proof does not even warrant the inference that any kind of a contract was made.

Community School District v. Booth, 1 Ill. 2d 545, 116 N. E. 2d 161. Under the *cypres* doctrine title to property vested in a dissolved school district named as a beneficiary under the testator's will becomes the property of the successor to the school district. Where in a will there is a gift in trust for charitable purposes, it vests in interest upon the death of the testator, though not in possession or enjoyment, and the gift is not subject to the rule against perpetuities.

Laterza v. Murray, 2 Ill. 2d 219, 117 N. E. 2d 779 reiterated the well established rule that dower is not an incident to the estate of joint tenancy. A wife has

no dower right in her husband's undivided one-half interest in real estate held in joint tenancy, even though the joint tenancy is terminated by the conveyance of such interest by the husband to a third party purchaser.

Burstein v. Milliken Trust Co., 2 Ill. 2d 243, 118 N. E. 2d 293 involved a trial *de novo* in the Circuit Court of objections to a final report of an executor. The objector claimed to be the adopted son of the decedent. His claimed status was ignored by the Circuit Court and his objections to the final account were summarily stricken on motion of the executor without any hearing on the objections. The Supreme Court remanded the case to the Circuit Court with directions for a full hearing on the objections. A trial *de novo* requires a complete trial on the issues presented.

Rehbein v. Morene, 2 Ill. 2d 363, 118 N. E. 2d 287. Executors were granted power to sell real estate and were "directed" to sell the land within five years after the termination of an income interest of the husband of the testator. The power of sale was not accompanied with any object expressed for the sale, nor was any direction given as to the application of the proceeds. The Supreme Court held the power of sale was a discretionary and not a mandatory one, and that the "direction" to sell merely placed a time limitation of five years on the discretionary power. The Supreme Court also held that an equitable conversion of the land to personalty did not take place because the power of sale was a mere naked power that did not divest the title to the real estate that was vested in the remainder beneficiaries.

Wessel v. Eilenberger, 2 Ill. 2d 522, 119 N. E. 2d 207 is a good example of the type and character of clear and convincing oral proof that is sufficient to award specific performance of an oral contract to make a will. The plaintiff did furnish valuable and unusual services to the decedent and did change her position for the worse in reliance on his promise.

Where necessary parties to a suit for specific performance are made parties in their individual capacities and each was served with summons and each answered the complaint in their individual capacities, the omission of the designation of certain of them in the summons as parties in their representative capacities is not material, where they were made parties in such capacities although not so served.

Appellate Court of Illinois Decisions

Milewski v. Milewski, 351 Ill. App. 158, 114 N. E. 2d 419 (1st Dist.) originated as a separate maintenance action by a wife against her husband. The wife obtained a temporary injunction restraining her husband from transferring his assets. While the injunction was in force, the husband changed the beneficiary of his insurance policies from his wife to his daughter. His son withdrew the balance of a joint savings account of the husband and son. During the pendency of the suit before any decree of separate maintenance was ever entered, the husband died. It was held that a suit for separate maintenance cannot determine any property rights, and did not survive the husband's death. Upon the husband's death, the temporary injunction became meaningless. Since the moneys were actually withdrawn from the joint account by the son and retained by him, and the change in the insurance beneficiary was actually completed, the husband could defeat his wife's marital rights by actual lifetime transfers of his funds that were bona fide and not sham transfers. (Note: Petition for leave to appeal denied by Supreme Court).

Tuttle v. Murphy, 351 Ill. App. 250, 114 N. E. 2d 676 (2d Dist.) At her death the testator had a cash balance of the proceeds of a farm sold by her during her lifetime and after she had made her will devising the farm in equal shares to all of her eight children. A previous section of her will bequeathed all her personal property to three daughters. It was held that although a will takes effect only as of the date of the death of the testator, it is construed as of the date of its execution. At that time the testator certainly intended that the farm was to be divided among all of her eight children. In order to carry out this intention the Appellate Court deemed the unexpended proceeds of the sale of the farm to be intestate property so that they would be distributed equally amongst all of the testator's eight children. This was an equitable result but contrary to the usual rules in will construction suits to prevent an intestacy of any of a testator's property. (Note: Petition for leave to appeal dismissed by Supreme Court).

Friedman v. A. A. N. S. Congregation, 351 Ill. App. 413, 115 N. E. 2d 553 (1st Dist.). Under the rules and regulations of a cemetery, disinterment of bodies was forbidden. These rules and regulations are valid and effective and prevent members of a family of a decedent buried in the cemetery to remove the decedent's remains to another cemetery.

Van Brunt v. Osterlund, 351 Ill. App. 556, 115 N. E. 2d 909 (2d Dist.)

(1) A specific bequest was made conditioned upon the legatee or her heirs not taking any action to invalidate the will. Other interested persons filed a suit to contest the will. The specific legatee did nothing and permitted a default to be entered against her. This did not constitute action to contest the will, but was simply a failure to act and the specific bequest was not invalidated.

(2) If pecuniary legacies are not paid within one year after the testator's death, they draw interest at 5% per annum, commencing one year after the death of the testator.

(3) The additional interest penalty of 10% per annum under Section 308 of the Probate Act for failure to pay a legacy within two years from the issuance of letters is a penal statute and strictly construed to prevent the imposition of the penalty. The pendency of a will contest suit is good cause for failure to settle an estate at an earlier date.

In re Estate of Knasek, 1 Ill. App. 2d 387, 117 N. E. 2d 683 (1st Dist.) A beneficiary under an earlier will has a right to appeal to the Circuit Court from an order admitting a later will to probate as the beneficiary's rights are affected. He is properly considered as a person who "considers himself aggrieved" under Section 330 of the Probate Act.

In re Estate of Fischer, 1 Ill. App. 2d 528, 119 N. E. 2d 855 (1st Dist.) Neither the Probate Court nor the Circuit Court on appeal have jurisdiction of controversies relative to the interment and disinterment of human bodies. While there is no right of property in a dead body, the law recognizes the right of a surviving spouse and not in the next of kin to possession of the body and to the control of the burial or other legal disposition thereof.

Kramp v. Kramp, 2 Ill. App. 2d 17, 116 N. E. 2d 83 (3d Dist.) Under the divorce statute, the power of the court to enter orders for child support is the same as orders for the payment of alimony to the divorced wife. Even if questions of support of minor children are reserved in the decree for future determination, upon the father's death, the court loses jurisdiction to enter any order relative to child support so that it will become a charge against the father's estate.

People ex rel. William v. Wismuth, 2 Ill. App. 2d 109, 118 N. E. 2d 881 (2d Dist.) In a citation hearing for the recovery of assets of a decedent, the trial court, in the exercise of its discretion, could call the respondent as the court's witness and permit her to testify as to the alleged gift of shares of stock she claimed the decedent made to her. The Appellate Court followed the earlier decision of *Storr v. Storr,* 329 Ill. App. 537, 69 N. E. 2d 916, approving the trial court's discretion in permitting the respondent to testify in her own behalf. On this same point, *Johnson v. Mueller,* 346 Ill. App. 199, 104 N. E. 2d 651 holds diametrically the opposite way as the Appellate Court in that case upheld the trial court's discretion in refusing to permit the respondent in his own behalf. What standard shall govern the trial court's discretion in this regard? (Note: Petition for leave to appeal denied by Supreme Court on September 15, 1954).

Hallin v. Hallin, 2 Ill. App. 2d 118, 118 N. E. 2d 612 (2d Dist.) A trustee is generally without authority to execute a lease that extends beyond the life of the trust. Ordinarily a lease by a trustee for a period that extends beyond the expiration of the trust is void as the excess of the trust period.

First National Bank of Chicago v. Piaget, 2 Ill. App. 2d 207, 119 N. E. 2d 457 (1st Dist.) A will created a trust and at its termination the corpus was to be distributed to such of the testator's nephews and nieces as "may at such time survive, and to the issue of any who may have predeceased me." The Appellate Court approved the introduction of parol evidence's dehors the will to prove testator's intention that the daughter of a nephew of the decedent who survived the testator but who died before the termination of the trust was also to share in the distribution of the corpus of the estate in place of the nephew.

Link, as Executor v. Ralston, 2 Ill. App. 2d 561, 120 N. E. 2d 353 (1st Dist.) This is a landmark decision and holds flatly for the first time in Illinois that a statutory joint bank account with right of survivorship can be shown by parol evidence after the death of the real owner of the funds to have been merely an arrangement for the convenience of the real owner of the funds, and that it was the actual intention of the parties that the survivor was not to own any part of the funds in the account. This decision overrules *Cuilini v. Northern Trust Co.* 335 Ill. App. 86, 80 N. E. 2d 275. (Note: Petition for leave to appeal allowed by Supreme Court on September 15, 1954).

In re Estate of Betts, 2 Ill. App. 453, 119 N. E. 2d 801 (3d Dist.) A testator's will made certain specific legacies and then provided for disposition of his residuary estate. He directed the payment of his debts, funeral expenses, costs of administration, inheritance taxes and attorney's fees "out of my estate." The Appellate Court held that the ambiguous words "out of my estate" did not mean that these charges were to be paid out of the "whole" estate and borne proportionately by each legacy. The Appellate Court held that these charges were all to be borne by the residuary estate after the payment of the specific legacies.

An order of the County Court assessing inheritance taxes is not *res adjudicata* against the Executor and legatees, as the inheritance tax proceedings are not adversary as to the rights of the executor and legatees. The State of Illinois is the adversary party in inheritance tax proceedings.

The Circuit Court on a trial *de novo* from an appeal from the Probate Court has jurisdiction to allow reasonable attorney's fees to the executor in hearings relative to propriety of his charging all debts, attorneys' fees and inheritance taxes against the residuary estate.

Biggerstaff v. Est. of Nevin, 2 Ill. App. 2d 462, 119 N. E. 2d 826 (3d Dist.) Even though a witness' oral testimony of an alleged admission of a debt made by a decedent in favor of a claimant for services is not directly contradicted by other oral testimony, the background facts and circumstances which raise questions which reflect on the admission, may justify a verdict and judgment in favor of the estate.

In re Estate of Yocum, 2 Ill. App. 472, 119 N. E. 2d 819 (3d Dist.) The first item of a testator's will directed that all of her debts be paid. The second item of the will provided for an equal division of her remaining estate among her children. A codicil to the first item of the will directed that a daughter be paid a reasonable amount for support and care of the testator. This direction did not make the daughter a legatee, and it was necessary for her to file a claim against the estate like any other claimant. The daughter failed to file a claim within the statutory period for filing claims and had no remedy on her claim.

Farkas v. Williams, 3 Ill. App. 2d 248. In an alleged "Declaration of Trust" the settlor declared himself to be the trustee of securities and reserved (a) all the

(Continued on page 15)

DECALOGUE BAR TEST

The following questions to test the fund of knowledge of a lawyer were prepared by David F. Silverzweig, past president of our Society. Answers appear on page 13.

Decalogue members are invited to send us legal problems of interest, with solutions. No field of law is exempt and no state is barred. Address, Benjamin Weintroub, editor, 82 West Washington St., Suite 212, Chicago 2, Illinois.

Questions

1. Betty and John are unhappy in their marriage because of Betty's constant nagging. Finally, in desperation, John warns Betty that if she nags him just once more, he will leave for good. She continues to nag him, and John packs his grip and moves to a hotel. Betty does not ask him to return. After one year, John files suit for divorce charging desertion. What result?

2. Frieda and Arnold were very happy in their married life until Arnold came home intoxicated on their tenth wedding anniversary and without any remembrance of the occasion. Frieda brooded over this incident for a month and then ordered Arnold from the home, saying she would no longer live with him. There was no violence. Arnold left. A year elapsed during which time neither offered to resume the marital relationship. Frieda then filed suit for divorce charging desertion. Arnold filed a counter-claim charging Frieda with desertion. What result?

3. A, B, C, D and E own a parcel of real estate in joint tenancy. E quitclaims his interest to X. How is title then held?

4. Apex Meat Co. issued its check for $140 to Jackson in payment of two weeks' wages. On his way home from work, Jackson stopped at Regan's tavern for a short beer. He eventually reached home in an intoxicated condition without the check and without any money. Jackson's wife complained to the employer who stopped payment on the check. Regan, claiming to be a holder in due course, filed suit against Apex for the amount of the check which was endorsed in blank by Jackson. A defense is filed that Regan induced Jackson to become grossly intoxicated and while he was in such condition and not in full possession of his faculties, Regan induced Jackson to endorse the check for which no valid consideration was given. Regan moved to strike the answer and for judgment. The defendant elected to stand on its answer. What result?

5. Clara was killed in an automobile accident leaving two children, Sarah, 14 years of age, and Robert, 3 years old. Clara's husband and the father of the children was an invalid confined in a sanitarium. Having no other kin, the children were taken to the home of a kindly neighbor, Hiram, who reared the children as his own and whom they regarded as a father until his death 12 years later. By then Sarah was married and the mother of Diane, one year old, and living in her own home. Robert was still living with Hiram at the time of the latter's death. No steps were ever taken to adopt either of the children as their father was still living. Hiram left a will bequeathing $30,000 each to Sarah, Robert, and Diane. An inheritance tax exemption of $20,000 each was claimed by Sarah and Robert as if they were the lawful children of Hiram. A similar exemption was claimed for Diane. Were they entitled to the claimed exemptions?

MISSING HEIRS

Drawing on the vast store of his own experiences in probate practice, member Samuel Fink addressed our Society on October 15 in the Covenant Club, under the auspices of the Decalogue Forum Committee on, "Lost Heirs: How To Find Them."—The geneological order of succession under the law in probating a will received close attention from the speaker. Fink gave several provocative instances from his own investigations to establish the validity of claimants status under the terms of a Will. Some of the cases on which he reported were as exciting as detective fiction.

H. Burton Schatz is chairman of The Decalogue Society of Lawyers Forum Committee.

Photographic Contest

The Decalogue Society of Lawyers Photographic Contest Committee, Samuel W. Kipnis, chairman, announces a photographic contest for members of our Society only, of photographs and slides made at Decalogue events, (outings, forums, dinners, committee meetings, etc.), during the period from June 1, 1954 to June 1, 1955.

Rules for the contest are as follows:

Prints or slides entered for this show must have been exposed by the member at one or more of the regularly held events of the Society, as follows:

It is not necessary that the member make the print himself. It is sufficient if he exposed the film.

Prints must be mounted on suitable mounts and must be no smaller than 8" x 10". It is preferred that they be mounted on 16" x 20" mounts. The maker's name must appear on the back of the print and each print should be titled. The member must mark the class in which he wants his print entered.

Slides should be mounted in the following size mounts. 2" x 2" or 2¼" x 2¼". Mounting between glass is preferred, but not necessary. The member's name must appear on the mount, preferably on the back. Each slide should be titled. All slides must be "spotted" or marked in the lower left corner to indicate how the member wants it projected. Mark or spot your slide when viewing it with transmitted light. The member must mark the class in which he wants his slide entered.

Judges will be selected in advance and their names and the date and place of the judging will be announced in our Journal. Judges are to be preferably non-members; if members, they will be those who do not participate in the contest. Members of this Committee are eligible to enter the contest if they are not serving as judges.

Each member may submit 4 prints and 4 slides, but no more.

To give every member a chance, the prints and slides are divided into the following classes: Best pictorial. Funniest. Craziest. Best Close Up. Best of members at work, at Society events. Best human interest. The poorest print.

You may enter in more than one class, but you must limit your total entries to four prints and four slides. Prizes will be awarded in each class. Prints and slides will be exhibited to the membership. Times and places will be announced in our Journal.

Closing date for all entries is June 10, 1955.

Answers—Decalogue Bar Test

1. Decree dismissed for want of equity. To make out a case of constructive desertion in Illinois, the misconduct relied upon as justification for leaving must be such as would in itself constitute a ground for divorce. *Godfrey v. Godfrey,* 284 Ill. App. 297. Nagging is not a ground for divorce in Illinois.

2. Decree for divorce in favor of Arnold on his counter-claim. Frieda's ordering Arnold from the home constituted desertion on her part. She could have brought the desertion to an end before lapse of the statutory period by offering in good faith to resume the marital relationship. Not having done so, Frieda is deemed the guilty party. *Mathews v. Mathews,* 227 Ill. App. 465.

3. A, B, C and D are owners in joint tenancy of an undivided four-fifths interest. X owns an undivided one-fifth interest. A, B, C and D, as a group, are tenants in common with X.

4. Judgment for plaintiff. The defense asserted is personal to Jackson who is not a party to the suit. The maker cannot urge this defense in a suit brought by an endorsee. *Crawford v. Turner,* 319 Ill. App. 172.

5. All three were entitled to the full $20,000 exemption. Where the decedent for a period of not less than 10 years prior to his death stood in the acknowledged relation of parent to any person, such person and his or her descendents are entitled to the same exemptions as lawful children of the decedent, provided that such relationship began at or before such person's fifteenth birthday and was continuous for 10 years thereafter. Illinois Revised Statutes, 1953, Chap. 120, Par. 375.

Redevelopment of Shopping Centers

By ROBERT F. BRANDWEIN

The threat of deterioration of urban shopping centers by the competition of outlying shopping centers induced businessmen and leaders in city government to meet this challenge with a bold new plan. The "Perimeter Plan" devised by Frederick T. Aschman, Executive Director of the Chicago Plan Commission, is designed to preserve and rehabilitate existing urban shopping centers through the cooperation of city agencies and businessmen. The essence of this plan which may be applied at least in part to any unplanned or deteriorating shopping district is this:

Using existing streets when possible, a one-way traffic circle is constructed around the shopping area; all private vehicles are routed into the traffic circle and all mass transportation conveyances are routed through the center of the shopping district either at grade or subway; all residential buildings and other non-conforming or blighted buildings inside the circle are acquired and cleared; all local streets and alleys within the circle are eliminated with the exception of those leading to parking lots and service entrances of commercial establishments; parking and service facilities are provided on cleared land and vacated streets and alleys; the streets through the center of the circle are narrowed to one lane for public conveyance, with cutouts for loading points, and the land saved in combined with existing sidewalks to create pedestrian malls; landscaping and shelter from the elements is provided; the rear of the commercial buildings are remodeled for greater service efficiency and to give an attractive appearance from the parking lots; plain and uniform architectural treatment is planned throughout the circle; a cooperative organization of land and business interests inside the circle will coordinate the development, architectural style, maintenance and continued improvement.

The beauty of this plan, its advocates state, lies in the fact that all of its main elements can be accomplished without a substantial alteration of major store facilities. Already, at 63rd and Halsted streets, the city has undertaken to condemn six sites to be used for parking and a large department store has made plans to take over one of the busiest corners.

The legal problems involved in such a plan might be grouped as non-financial and financial. Those that are non-financial include (1) the vacating of streets and alleys and zoning, (2) the use of the power of eminent domain and (3) obtaining the benefits of single-ownership control.

Streets and alleys may be vacated by ordinance when the public interest so requires.* However, they may not be closed for a private purpose. Recalcitrant land owners may contend that the numerous street vacations contemplated by this plan are for a private purpose and therefore illegal. Of course, the local zoning ordinances should be drawn or amended to give the maximum benefit to the redeveloped center.

It will be necessary or desirable to exercise the power of eminent domain in at least three instances: to clear blighted or non-conforming structures, to provide parking areas and to widen and improve streets mainly around the perimeter. In Illinois, under the Blighted Areas Redevelopment Act of 1947, the land clearance commissions have the power to acquire slum and blighted areas of not less than two acres in the aggregate as therein further defined. (Ill. Rev. Stat. 1953, Ch. 67-½, secs. 63-91. Validity upheld in People ex rel. *Tuohy* v. *City of Chicago*, 399 Ill. 551, 78 N. E. 2nd 285 (1948); *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310, 104 N. E. 2nd 236, Cert. Den. 344 U. S. 824 Oct. 1952). The definition of a slum and blighted area under this Act is not broad enough to empower the commissions to acquire isolated buildings which may be necessary to implement the perimeter plan. The cities in Illinois have power under the Cities and Villages Act to acquire slum and blighted areas, but again with the same minimum acreage requirement and the definition of such an area which does not encompass isolated structures. (Ill. Rev. Stat. 1953, Ch. 24, secs. 23-103. 1). Elimination of non-conforming uses may prove to be troublesome in view of the experience with attempts to do so under the zoning laws.

Some 32 states today have off-street parking legislation which give cities the power of emi-

* (Ill. Rev. Stat. 1953, Ch. 24, sec. 69-11; People v. Corn Products Refining Co., 286 Ill. 226, 121 N. E. 574 (1919)).

nent domain to acquire an off-street parking site. Under these Acts it is possible to acquire land for parking areas so necessary to serve today's consumers and to implement redevelopment of shopping centers. (In Illinois this power is found under Ill. Rev. Stats. 1951, Ch. 24, Sec. 52. 1-8. Validity upheld in *Poole* v. *City of Kankakee,* 406 III. 521, 94 N. E. 2nd 416 (1950)). The power to acquire property for street construction and improvement is given in every state. (The cities in Illinois have this power under the Cities Villages Act, III. Rev. Stats. 1951, Ch. 24, Secs. 23-8, 23-110).

The third and last non-financial legal problem is that of obtaining the benefits of single ownership control in a redeveloped center. In the suburban and newly planned centers there is usually one owner, and he will provide parking space, control the use of signs, and make any other regulations and improvements necessary to make his center attractive and successful. In the established districts there is usually a diversity of land and business interests, and no one party has sufficient legal rights or capital to create an attractive and efficient center. If local business interests will band together and perhaps release part of their fee interest to a cooperative or central organization, the necessary leasing and other regulations and improvements may be made on an equitable basis. Self assessment may provide the needed capital. Joint parking ventures or rehabilitation corporations might be undertaken.

Admittedly, it will be necessary to use public funds to make some of the improvements required for the redevelopment of urban shopping centers. In cases where it would be lawful to exercise the power of eminent domain, it may also be lawful to expend public money to redevelop the land acquired for the purpose stated in the statute. Two sources of money now available in most states are funds to acquire off-street parking (raised by revenue bonds and/or, general obligation bonds) and funds to construct and improve streets. (In Illinois the expenditure of money to construct and improve the perimeter and through streets is authorized as a major traffic improvement under the Motor Fuel Tax Act, III. Rev. Stat. 1953, Ch. 120, Sec. 417 et seq.) To provide another source of money may require, as previously noted, new or amended legislation such as the urban redevelopment and slum clearance laws—perhaps to permit the acquisition of isolated dilapidated structures even if they are in commercial areas. A fourth source is special assessments under the local improvement acts of the various states. (In Illinois, special assessments may be made under III. Rev. Stat., 1953, Ch. 24, Sec. 84-1 et seq.) Redevelopment of urban shopping centers is a phase of city planning in which lawyers must play a dominant role. Businessmen must rely on (them) to skillfully use the legal tools available and to sponsor new legislation when necessary.

EDITOR OF THE "NATION" SPEAKS

Carey McWilliams, noted civic leader, author, and Editorial Director of the "Nation" addressed our Board of Managers at a luncheon at the Covenant Club on Friday, Nov. 19, on the contemporary American social and political scene. Upon the conclusion of his speech, Mr. McWilliams answered questions from the floor.

Judicial Candidates Guests of Society

Following a long established custom, our Society was host on October 22, at a luncheon at the Covenant Club, to both the Republican and Democratic candidates for judicial office. Spokesmen for both parties addressed a large gathering of members and their friends.

Recent Illinois Probate Law Decisions

(Continued from page 11)

income for life, (b) the power to change the beneficiary and revoke the trust, (c) the power to sell, redeem or otherwise deal with the securities as his own property without having revoked the "Trust" and retain the proceeds of any sale or redemption for his individual account. The trustee was subject to no duties of administration and was not accountable to the "beneficiary," title to the securities was to vest in the "beneficiary" upon the death of the settlor-trustee. The interest of the "beneficiary" was not transmissible to his legatees or next of kin but "lapsed" if he predeceased the settlor-trustee. This attempted "declaration of trust" was invalid as a trust as it was an attempted testamentary disposition that did not conform to the Statute on wills. (Note: Petition for leave to appeal allowed by Supreme Court on September 15, 1954).

BOOK REVIEWS

Illinois Divorce, Separate Maintenance and Annulment, by Meyer Weinberg. The Bobbs-Merrill Co., Inc. 691 pp. $15.00.

Reviewed by DAVID F. SILVERZWEIG

The large increase in matrimonial litigation since World War I has propelled the problem of divorce into prominence as one of the most common, and frequently one of the most troublesome, with which the general practitioner is faced. Despite the many laudable efforts at "reform," divorce and separate maintenance are still daily problems in many of the law offices of Illinois. As such, they must be dealt with from the standpoint of legal rights and obligations in their various complexities, involving as they do property, status, taxation, and personal relationships such as custody of minor children.

To answer quickly the questions which constantly arise, lawyers of this State have felt a need for many years of a complete, reliable, and authoritative text keyed to the Illinois law and dealing with cases arising under the Illinois statutes. This long-felt need has now been supplied by Meyer Weinberg in the recently published *Illinois Divorce, Separate Maintenance and Annulment.* The author, a member of The Decalogue Society of Lawyers, has distilled into this text the essence of a detailed and exhaustive study of all Illinois cases dealing with matrimonial causes.

The book is divided into five parts: Divorce, Separate Maintenance, Annulment, Appeal, and Forms. The law, for the most part, is stated in the language of the cases so that the reader may have a first hand grasp of the thinking of the courts on a point in issue.

The volume, while complete, is lean and sinewy. It contains no excess fat. The author writes with clarity and with an extreme economy of words. The book is unencumbered and unadorned by philosophical excursions or comparative studies with the laws of other states. The lawyer who wants to find the Illinois law on a point quickly and with confidence as to the accuracy and completeness of the text will be at home in this volume.

Of special interest is the chapter dealing with appeals. Mr. Weinberg acknowledges that this section of the book "had the advantage of the constant counsel of Harry G. Fins, well known authority on Illinois and Federal law and procedure." The practitioner presented with a contested case and the possibility of an appeal will profit from a reading of this chapter which presents the law on appeals as related to matrimonial causes succinctly and authoratively.

The chapter on taxation is of more than routine interest. To attempt a property settlement without an understanding of the income tax problems involved in these days of heavy taxation is a risk which may be costly—to the client in money and to the lawyer in prestige.

The book contains no less than 154 separate forms. Both court forms and out-of-court agreements are included. The forms are keyed to the text and cover all phases of marital litigation, including post-decretal proceedings and appeals.

This volume will be helpful to every law office and invaluable to most.

Hatred, Ridicule or Contempt. A Book of Libel Cases. By Joseph Dean. The Macmillan Company. 271 pp. $3.75.

Reviewed by ELMER GERTZ

In England, rather than the United States, the libel action has reached its full glory as part of the legal dramaturgy. It is appropriate, therefore, that this highly entertaining and often enlightening book should have been published originally in England. The book is as varied in contents as British life itself. Famous and infamous authors, politicians, journalists, artists, men of affairs, lords and ladies, strut across its pages and on the witness stand: pontifical, pretentious, pinchbeck, stupid, malicious, and sometimes clever and brilliant. There is comedy, high and low, and sometimes tragedy, as in the case which completed the financial ruin of Harold Laski and, incidentally, showed that intellectual brilliance is sometimes a recipe for disaster in court when a skilled cross-examiner is at work.

England is traditionally the land where the freedom of utterance is most cherished. Yet it is in England that libel actions are taken most seriously. In England, therefore, you are able to speak what you will, provided you are willing to pay the costs. In libel actions in England the costs include, as Laski found, the other fellow's attorney fees as well as your own, if you are unsuccessful.

Some men in Britain have made a career of such litigation, notably Lord Alfred Douglas. Some of the most interesting pages in this book are about this strange son of the erratic Marquis of Queensberry, who preferred to do his fighting in court, rather than the ring—or, more accurately, first in the columns and pages of books and periodicals, then in the courts. Having corresponded with Lord Alfred for years and being as familiar with his choppy

career as with his truly great poetry. I found my attention riveted to the many pages in this book in which he is the protagonist—as litigant (both prosecuting and defending) and as witness. The most interesting case was one in which he was not called, although obviously his testimony would have been most in point—and that is the ill-starred libel action brought by the foolhardy Oscar Wilde, at his urging, against his father, the mad Marquis of Queensberry. Most of Lord Alfred's career in court was fabulously successful, until he accused Winston Churchill of having been in league with "the Jews" in the manipulating of communiques about the battle of Jutland in World War I. This led to his imprisonment for criminal libel and the writing of what is at once one of the most hateful and beautiful sonnet sequences in our language.

The same can be said of his handling of Aleister Crowley, another talented eccentric with whom I have some familiarity through correspondence. Mr. Dean brings out all that can be said against Crowley, and it is voluminous and grievous, but he gives the impression that Crowley was a fraud through and through, whereas he actually had a certain genius as a poet and adventurer. The moral apparently is that few people are at their best in court rooms —and that includes, besides witnesses and parties, lawyers and judges. In these cases it is demonstrated again that the best prepared side is most likely to win—the best prepared, or the most cunning.

Some of the best pages of this book deal with historical characters like Rasputin and Gladstone. In the latter case the issue was the reputation of the dead, impugned by a Captain Peter Wright, and it was successfully defended by the great Liberal leader's son. In the former case, Prince Youssoupoff admitted that he slew Rasputin, the Czarina's favorite; yet he and his wife were awarded heavy damages against Metro-Goldwyn-Mayer in connection with a moving picture they produced.

Captain Peter Wright, the libeller of Gladstone, once insulted the distinguished British artist Augustus John, who, as he wrote to me, "returned the compliment" by punching his nose. This is also a British response to libel, which Mr. Dean does not touch upon, perhaps out of a sense of legal delicacy.

There are cases here to suit almost any taste in this typically British volume. Only now are American publishers showing the interest in books about lawsuits that the British have always displayed. The Francis X. Busch volumes issued by the Bobbs Merrill Company, are an innovation here that are likely to be emulated. The principal differences between Mr. Dean's book and Mr. Busch's are the lighter touch and brevity of Mr. Dean, who hits the high spots of the testimony more often than does Mr. Busch, who has other solid virtues of his own.

Lawyers can join with laymen in amusing and enlightening themselves with books such as this one.

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Our Society will honor all the Cook County Judges at a cocktail party on December 22, 4:00 P.M., in the Grand Ballroom of the Covenant Club.

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The Charter of the United Nations

The Charter of the United Nations was unanimously approved in San Francisco by the heads of 50 delegations in June 1945. It came into force October 24, 1945, when the 5 permanent members of the Security Council and 24 other signatory States deposited their ratifications with the United States.

The aim of the Charter was:

—to save succeeding generations from the scourge of war

—to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal right of men and women and of nations large and small

—to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained

—to promote social progress and better standards of life in larger freedom

The subscribing nations proposed:

—to practice tolerance and live together in peace with one another as good neighbors

—to unite our strength to maintain international peace and security

—to insure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest

—to employ international machinery for the promotion of the economic and social advancement of all people.

The United Nations has suffered failures and defaults. But it has also achieved great successes. It is as imperfect as all human institutions and more imperfect than many. But it serves an essential function. It provides machinery to the world community for co-operative undertakings. Moreover, it provides a forum for argument and debate, a pulpit where pleas to the conscience of the world may be made. Through the channels provided by the United Nations, even a voice from the wastelands of the earth can be heard. Through the good offices of the United Nations, the members of the world community are coming to know that all problems have a common denominator. It is that understanding which in time will furnish the cement necessary to bind all peoples closely together.

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